

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAROY D NEWPORT, *et al.*,

No. C-10-04511-WHA (DMR)

Plaintiffs,

**ORDER RE JOINT DISCOVERY
LETTER OF SEPTEMBER 6, 2011
[DOC. NO. 170]**

v.

BURGER KING CORP.,

Defendant.

Before the court is the parties' September 6, 2011 joint letter [Docket No. 170] in which Counter-Defendants and Counter-Claimants Strategic Restaurants Acquisition Company II, LLC, SRAC Holdings I, Inc., and Jerry M. Comstock (collectively, "Strategic") seek additional time beyond the presumptive seven-hour limit to depose Thomas Archer, James Carberry, and John Salmen. Defendant Burger King Corporation ("BKC") opposes the motion. This matter is suitable for determination without oral argument. N.D. Cal. Civ. R. 7-1(b).

Rule 30(d)(1) of the Federal Rules of Civil Procedure states that a deposition is limited to one day of seven hours, unless otherwise stipulated by the parties or by court order. Rule 30(d)(1) requires the court to allow additional time "if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination." Rule 30(d)(1) also makes clear that when evaluating a party's request to expand the presumptive seven

1 hour limit, the court should ensure that the discovery sought is not unreasonably cumulative,
2 duplicative, or burdensome. *See also* Fed. R. Civ. P. 26(b)(2).

3 Strategic seeks an additional three hours of deposition each for Archer and Salmen, and an
4 additional two hours for Carberry. All three previously were deposed for a full day. Archer is the
5 former BKC Assistant General Counsel who apparently managed the defense of BKC's disability
6 litigation nationwide, including the *Castaneda* class action that underlies this indemnification case.
7 Carberry is a BKC Senior Construction Manager who inspects franchisee restaurants within the
8 geographic region covered by this case for a variety of issues, including accessibility of restaurants
9 to disabled patrons. Salmen is an architect and ADA consultant retained by BKC over the years,
10 including as a non-testifying expert in *Castaneda*.

11 The parties do not dispute that the three deponents have knowledge of important issues in
12 this case. Strategic argues that it did not have an adequate opportunity to ask questions of each
13 witness, since the depositions principally were conducted by plaintiffs' counsel, who represent the
14 approximately seventy-two plaintiffs in this case. Strategic also argues that there are unique issues
15 relating to its 2005 acquisition of franchises, including some purchased directly from BKC. In
16 response, BKC argues that the deponents already have been subject to extensive questioning on
17 topics common to all franchisees and that Strategic did not take steps to reserve adequate time to ask
18 questions of the deponents.

19 The court finds that Strategic has made a sufficient showing under Rule 30(d)(1) to justify
20 some additional deposition time of all three witnesses. Strategic may depose all three witnesses
21 each for an additional hour, exclusive of breaks. This provides adequate time to cover areas unique
22 to Strategic and also provides an incentive for Strategic to be appropriately selective when asking
23 questions in broad subject areas that already have been covered.

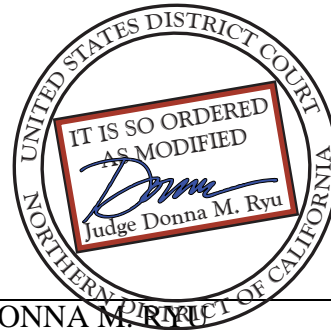
24 All parties should note that for depositions that currently are underway or have not yet been
25 taken in this case, the parties must meet and confer before the deposition session to coordinate how
26 much time should be allotted to each party counsel to conduct questioning.

Conclusion

Strategic's request for additional time to question deponents Archer, Carberry, and Salmen is GRANTED IN PART. Strategic may depose each of the three witnesses for an additional hour, exclusive of breaks.

IT IS SO ORDERED.

Dated: September 12, 2011



DONNA M. RYU
United States Magistrate Judge